IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 755 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL RAMABHAI KEVALBHAI

Versus

PATEL LAKHUBEN,WD/O PATEL HARIBHAI KEVALBHAI

Appearance:

MR SURESH M SHAH for the Petitioner.

MR MEHUL S SHAH for the Petitioner.

RULE SERVED BY DS for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/04/2004

ORAL JUDGEMENT

Vide order dated 18th November, 2002, this CRA is admitted and in response to the notice of this Court, one Amtabhai Umedbhai Patel is present in the Court and he

has produced power-of-attorney given by respondents 1, 2 and 3 herein to him for appearing in this matter and arguing their case. Mr.Shah for the petitioner wants permission to delete respondents 4 and 5, as, according to him, they are supporting the present petitioner. Permission to delete respondents 4 and 5 is accordingly granted.

It is submitted by Shri Amtabhai Patel, the power-of-attorney holder, that he has no objection if the documents in question are allowed to be produced on record subject to the defendant proving the same.

The petitioner is the original defendant No.1 of Special Civil Suit No.146 of 1994. The said suit is filed by the plaintiffs for partition. In the said suit, the present petitioner submitted an application Exhibit 85 for producing certain documents on record. The trial court has found that defendant No.1 has not produced the said documentary evince within the time stipulated by Order XIII Rule 2 of the Code of Civil Procedure and if such application is allowed, the plaintiff will suffer immensely. The trial court has, therefore, rejected the said application. The party-in-person, who is appearing for respondents 1, 2 and 3, today, however, submitted that he has no objection if the documents in question are allowed to be produced. However, it is submitted that the petitioner will have to prove the said documents at the time of evidence.

Considering the aforesaid concession on behalf of respondents 1, 2 and 3 herein, this revision is allowed and the petitioner is permitted to produce the documents which are submitted with the list at Exhibit 85. It is, however, clarified that simply by allowing such production, it should not be presumed that their contents are proved and the defendant will have to prove the documents before the trial court. It is also clarified that since the evidence of the plaintiff is over, the plaintiff is also permitted to offer his explanation about the aforesaid documentary evidence and will be permitted to lead evidence also in this connection in order to explain the documents in question. In short, by allowing such document to be produced, it should not be presumed that the contents are proved and the defendant No.1 will have to prove the documents in evidence before exhibiting the same and the plaintiff will be entitled to produce evidence in rebuttal in connection with the documentary evidence.

With the above observations, this revision is

accordingly allowed. Rule is made absolute.

Since petitioner-defendant No.1 has tried to produce document at a very late stage, the petitioner is also directed to pay costs of Rs.500/- in the trial court. Such costs to be paid on or before 3rd May, 2004 and respondents 1, 2 and 3 will be entitled to withdraw the said costs unconditionally from the trial court.

Considering the fact that the suit is of 1994, the trial court is directed to dispose of the said suit immediately and, in any case, by 31st August, 2004. It is agreed by the party-in-person as well as by Mr.Shah that the respective parties will cooperate with such early disposal.

Writ to be sent to the trial court forthwith and it should be despatched within a period of one week from today so that the trial court can proceed with the suit immediately.

12th April, 2004 (P.B. Majmudar, J.)

***

(apj)